

AMENDED IN SENATE MARCH 10, 2008

SENATE BILL

No. 1105

Introduced by Senator Margett
(Principal coauthor: Assembly Member Spitzer)

January 15, 2008

An act to amend Sections 44009, 44242.5, 44424, and 44425 of the Education Code, relating to teacher credentialing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1105, as amended, Margett. Teacher credentialing: criminal convictions.

(1) Under existing law, upon a plea of nolo contendere to a misdemeanor charge for violation, or attempted violation, of a violent or serious felony, or other specified offenses, all credentials held by the person that have been issued by the State Board of Education or the Commission on Teacher Credentialing are suspended until a final disposition regarding those credentials is made by the Commission on Teacher Credentialing. ~~Any~~ An action that the commission is permitted to take following a conviction may be taken after the judgment is final, as specified.

This bill would delete those provisions.

(2) Under existing law, upon a plea of nolo contendere to a sex offense, as specified, all credentials held by the person that have been issued by the State Board of Education or the Commission on Teacher Credentialing are suspended until a final disposition regarding those credentials is made by the Commission on Teacher Credentialing. ~~Any~~ An action that the commission is permitted to take following a conviction may be taken after the judgment is final, as specified.

This bill would delete those provisions.

(3) Under existing law, a plea or verdict of guilty by a court is deemed to be a conviction for purposes of provisions of law that require the Commission on Teacher Credentialing and the county board of education to suspend a credential issued by the State Board of Education or the commission whenever the holder has been convicted of ~~any~~ a sex offense or controlled substance offense. If the conviction is reversed and the holder is acquitted of the offense in a new trial or the charges against him or her are dismissed, the suspension of the credential will be terminated. When the conviction becomes final or when imposition of sentence is suspended, the credential will be revoked.

This bill would expand these provisions to include a plea or verdict of guilty by a court and a conviction following a plea of nolo contendere as a conviction for purposes of provisions of law that require the Commission on Teacher Credentialing and the county board of education to suspend, terminate the suspension of, or revoke a credential whenever the holder has been convicted of any sex offense or controlled substance offense. This definition of “conviction” *also* would ~~also~~ apply to other provisions concerning the procedure to be used by the Committee on Credentials upon receipt of allegations of conduct by an applicant for, or holder of, a credential, affecting the right to a credential, and grounds for the Commission on Teacher Credentialing to deny an application for the issuance of a credential or an application for the renewal of a credential.

(4) Under existing law, each allegation of an act or omission by an applicant for, or holder of, a credential for which he or she may be subject to an adverse action shall be presented to the Committee of Credentials. Upon completion of an investigation, if adverse action is recommended to the Commission on Teacher Credentialing, the findings of the committee are available upon request within one year from the date that the committee makes its recommendation to a school district providing verification that the credential holder has applied for employment in the district.

This bill would delete the requirement that the request for the findings by a school district providing verification that the credential holder has applied for employment in the district must be made within one year from the date that the committee makes its recommendation.

(5) Because this bill would increase the duties of local officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 44009 of the Education Code is amended
2 to read:
3 44009. (a) A plea or verdict of guilty or finding of guilt by a
4 court in a trial without a jury, or a conviction following a plea of
5 nolo contendere is deemed to be a conviction within the meaning
6 of Sections 44242.5, 44345, 44346, 44346.1, 44424, ~~44425, and~~
7 ~~44436 and 44425~~, irrespective of a subsequent order for probation
8 suspending the imposition of a sentence or an order under Section
9 1203.4 of the Penal Code allowing the withdrawal of the plea of
10 guilty and entering a plea of not guilty, or setting aside the verdict
11 of guilty, or dismissing the accusations or information.
12 (b) The record of a narcotics offense, as defined in Section
13 44011, shall be sufficient proof of conviction of a crime involving
14 moral turpitude for the purposes of Sections 44907 and 44923,
15 and Sections 44932 to 44947, inclusive, relating to the dismissal
16 of permanent employees.
17 (c) A plea or verdict of guilty, or finding of guilt by a court in
18 a trial without a jury, or a conviction following a plea of nolo
19 contendere is deemed to be a conviction within the meaning of
20 Section 44836 and 45123, irrespective of a subsequent order for
21 probation suspending the imposition of a sentence or an order
22 under Section 12033.4 of the Penal Code allowing the withdrawal
23 of the plea of guilty and entering a plea of not guilty, or setting
24 aside the verdict of guilty, or dismissing the accusations or
25 information. The record of conviction shall be sufficient proof of
26 conviction of a crime involving moral turpitude for the purposes
27 of Section 44907 and Sections 44932 to 44947, inclusive, relating
28 to the dismissal of permanent employees.

SEC. 2. Section 44242.5 of the Education Code is amended to read:

44242.5. (a) Each allegation of an act or omission by an applicant for, or holder of, a credential for which he or she may be subject to an adverse action shall be presented to the Committee of Credentials.

(b) The committee has jurisdiction to commence an initial review upon receipt of any of the following:

(1) (A) Official records of the Department of Justice, of a law enforcement agency, of a state or federal court, and of any other agency of this state or another state.

(B) For purposes of paragraph (A), “agency of this state” has the same meaning as that of “state agency” as set forth in Section 11000 of the Government Code.

(2) An affidavit or declaration signed by person or persons with personal knowledge of the acts alleged to constitute misconduct.

(3) (A) A statement from an employer notifying the commission that, as a result of, or while an allegation of misconduct is pending, a credential holder has been dismissed, nonreelected, suspended for more than 10 days, or placed pursuant to a final adverse employment action on unpaid administrative leave for more than 10 days, or has resigned or otherwise left employment.

(B) The employer shall provide the notice described in subparagraph (A) to the commission not later than 30 days after the dismissal, nonreelection, suspension, placement on unpaid administrative leave, resignation, or departure from employment of the employee.

(4) A notice from an employer that a complaint was filed with the school district alleging sexual misconduct by a credential holder. Results of an investigation by the committee based on this paragraph shall not be considered for action by the committee unless there is evidence presented to the committee in the form of a written or oral declaration under penalty of perjury that confirms the personal knowledge of the declarant regarding the acts alleged to constitute misconduct.

(5) A notice from a school district, employer, public agency, or testing administrator of a violation of Section 44420, 44421.1, 44421.5, or 44439.

(6) (A) An affirmative response on an application submitted to the commission as to any conviction, adverse action on, or denial

1 of, a license, or pending investigation into a criminal allegation or
2 pending investigation of a noncriminal allegation of misconduct
3 by a governmental licensing entity.

4 (B) Failure to disclose any matter set forth in subparagraph (A).

5 (c) An initial review commences on the date that the written
6 notice is mailed to the applicant or credential holder that his or her
7 fitness to hold a credential is under review. Upon commencement
8 of a formal review pursuant to Section 44244, the committee shall
9 investigate all alleged misconduct and the circumstances in
10 mitigation and aggravation. The investigation shall include, but
11 not be limited to, all of the following:

12 (1) Investigation of the fitness and competence of the applicant
13 or credential holder to perform the duties authorized by the
14 credential for which he or she has applied or that he or she presently
15 holds.

16 (2) Preparation of a summary of the applicable law, a summary
17 of the facts, contested and uncontested, and a summary of any
18 circumstances in aggravation or mitigation of the allegation.

19 (3) Determination of probable cause for an adverse action on
20 the credential. If the allegation is for unprofessional or immoral
21 conduct, the committee, in any formal review conducted pursuant
22 to Section 44244 to determine probable cause, shall permit the
23 employer of the credential holder to be present while testimony is
24 taken. If the allegation of unprofessional or immoral conduct
25 involves sexual abuse, the employer shall be examined in the
26 meeting for any relevant evidence relating to the sexual abuse.

27 (A) If the committee determines that probable cause for an
28 adverse action does not exist, the committee shall terminate the
29 investigation.

30 (B) If the committee determines that probable cause for an
31 adverse action on the credential exists, upon receipt of a request
32 from an applicant or a credential holder pursuant to Section
33 44244.1, the commission shall initiate an adjudicatory hearing, as
34 prescribed by Chapter 5 (commencing with Section 11500) of
35 Division 3 of Title 2 of the Government Code, by filing an
36 accusation or statement of issues.

37 (d) The committee has jurisdiction to commence a formal review
38 pursuant to Section 44244 upon receipt of any of the following:

39 (1) (A) Official records of a state or federal court that reflect a
40 conviction or plea, including a plea of nolo contendere, to a

1 criminal offense or official records of a state court that adjudge a
2 juvenile to be a dependent of the court pursuant to Section 300 of
3 the Welfare and Institutions Code due to allegations of sexual
4 misconduct or physical abuse by a credential holder or applicant.

5 (B) Nothing in paragraph (A) shall be construed to relieve the
6 commission from the confidentiality provisions, notice, and due
7 process requirements set forth in Section 827 of the Welfare and
8 Institutions Code.

9 (2) An affidavit or declaration signed by a person or persons
10 with personal knowledge of the acts alleged to constitute
11 misconduct.

12 (3) A statement described in paragraph (3) of subdivision (b).

13 (4) Official records of a governmental licensing entity that
14 reflect an administrative proceeding or investigation, otherwise
15 authorized by law or regulation, which has become final.

16 (5) A notice described in paragraph (5) of subdivision (b).

17 (6) A response or failure to disclose, as described in paragraph
18 (6) of subdivision (b).

19 (e) (1) Upon completion of its investigation, the committee
20 shall report its actions and recommendations to the commission,
21 including its findings as to probable cause, and if probable cause
22 exists, its recommendations as to the appropriate adverse action.

23 (2) The findings shall be available, upon its request, to the
24 employing or last known employing school district, or, where
25 adverse action is recommended by the committee and a request
26 by a school district providing verification that the credential holder
27 has applied for employment in the district. The findings, for all
28 purposes, shall remain confidential and limited to school district
29 personnel in a direct supervisory capacity in relation to the person
30 investigated. Any person who otherwise releases findings received
31 from the committee or the commission, absent a verified release
32 signed by the person who is the subject of the investigation, shall
33 be guilty of a misdemeanor.

34 (3) The findings shall not contain any information that reveals
35 the identity of persons other than the person who is the subject of
36 the investigation.

37 (f) (1) Except as provided in paragraph (2) and, notwithstanding
38 subdivision (b), for purposes of determining whether jurisdiction
39 exists under subdivision (b), the commission, in accordance with
40 Section 44341, may make inquiries and requests for production

1 of information and records only from the Department of Justice,
2 a law enforcement agency, a state or federal court, and a licensing
3 agency of this state or a licensing agency of another state.

4 (2) For purposes of determining whether jurisdiction exists,
5 paragraph (1) does not apply to release of personnel records.

6 SEC. 3. Section 44424 of the Education Code is amended to
7 read:

8 44424. (a) Upon the conviction of the holder of any credential
9 issued by the State Board of Education or the Commission on
10 Teacher Credentialing of a violation, or attempted violation, of a
11 violent or serious felony as described in Section 44346.1, or any
12 one or more of Penal Code Sections 187 to 191, inclusive, 192
13 insofar as this section relates to voluntary manslaughter, 193, 194
14 to 217.1, inclusive, 220, 222, 244, 245, 261 to 267, inclusive, 273a,
15 273ab, 273d, 273f, 273g, 278, 285 to 288a, inclusive, 424, 425,
16 484 to 488, inclusive, insofar as these sections relate to felony
17 convictions, 503 and 504, or of an offense involving lewd and
18 lascivious conduct under Section 272 of the Penal Code, or an
19 offense committed or attempted in any other state or against the
20 laws of the United States which, if committed or attempted in this
21 state, would have been punished as one or more of the offenses
22 specified in this section, becoming final, the commission shall
23 forthwith revoke the credential.

24 (b) The commission shall revoke a credential issued to a person
25 whose employment has been denied or terminated pursuant to
26 Section 44830.1.

27 (c) Notwithstanding subdivision (a), a credential shall not be
28 revoked solely on the basis that the applicant or holder has been
29 convicted of a violent or serious felony if the person has obtained
30 a certificate of rehabilitation and pardon pursuant to Chapter 3.5
31 (commencing with Section 4852.01) of Title 6 of Part 3 of the
32 Penal Code.

33 SEC. 4. Section 44425 of the Education Code is amended to
34 read:

35 44425. (a) Whenever the holder of a credential issued by the
36 state board or the Commission on Teacher Credentialing has been
37 convicted of a sex offense, as defined in Section 44010, or
38 controlled substance offense, as defined in Section 44011, the
39 commission immediately shall suspend the credential. If the
40 conviction is reversed and the holder is acquitted of the offense in

1 a new trial or the charges against him or her are dismissed, the
2 commission immediately shall terminate the suspension of the
3 credential. When the conviction becomes final or when imposition
4 of sentence is suspended, the commission immediately shall revoke
5 the credential.

6 (b) Notwithstanding any other law, revocation shall be final
7 without possibility of reinstatement of the credential if the
8 conviction is for a felony sex offense, as defined in Section 44010,
9 or a felony controlled substance offense, as defined in Section
10 44011, in which an element of the controlled substance offense is
11 either the distribution to, or use of a controlled substance by, a
12 minor.

13 (c) (1) Notwithstanding any other provision of law, the
14 commission immediately shall suspend the credential of any holder
15 who is required to register as a sex offender pursuant to either of
16 the following:

17 (A) Section 290 of the Penal Code.

18 (B) A law of any other state or of the United States when the
19 underlying offense, if committed in this state, would require
20 registration as a sex offender pursuant to Section 290 of the Penal
21 Code.

22 (2) If the conviction requiring registration as a sex offender is
23 reversed on appeal and the holder is acquitted at a new trial or if
24 the charges against the holder are dismissed as a result of the
25 reversal, upon notice, the commission shall immediately reinstate
26 the credential.

27 (3) The commission immediately shall revoke a credential based
28 on a conviction requiring registration as a sex offender when the
29 time for appeal has elapsed, the judgment of conviction has been
30 affirmed on appeal, or an order granting probation is made
31 suspending the imposition of sentence and the time for appeal has
32 elapsed.

33 SEC. 5. If the Commission on State Mandates determines that
34 this act contains costs mandated by the state, reimbursement to
35 local agencies and school districts for those costs shall be made
36 pursuant to Part 7 (commencing with Section 17500) of Division
37 4 of Title 2 of the Government Code.